

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50270; File No. SR-Amex-2004-70]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to an Amendment to the Amex Company Guide To Provide the Amex Board of Governors With Discretion To Defer, Waive or Rebate Listing Fees

August 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 19, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by Amex. Pursuant to section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> Amex has designated this proposal as non-controversial, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 140, 141, 142 and 146 of the Amex Company Guide ("Company Guide") to provide that the Board of Governors or its designee may, in its discretion, defer, waive or rebate all or any part of the listing fees applicable to stocks, bonds and warrants.

The text of the proposed rule change is available at the Amex and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Amex has prepared summaries, set forth in sections A, B,

and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange is proposing to amend Sections 140, 141, 142 and 146 of the Company Guide to provide that the Amex Board of Governors or its designee may, in its discretion, defer, waive or rebate all or any part of the listing fees applicable to stocks, bonds and warrants. The Nasdaq Stock Market ("Nasdaq") has authority to waive or reduce listing fees, and periodically offers fee waivers in order to induce issuers to list on Nasdaq.<sup>5</sup> In order to enable the Amex to respond to specific competitive situations, the Exchange believes that it is appropriate to provide authority to defer, waive or rebate all or any part of the listing fees applicable to the listed securities of operating companies (*i.e.*, stocks, bonds, warrants, rights, *etc.*). Such authority could only be exercised by the Amex Board of Governors or its designee.<sup>6</sup> The Exchange asserts that it is contemplated that fee reductions would be granted only infrequently when necessary, as noted above, to respond to a specific competitive situations, and will not impact the Exchange's resource commitment to regulatory oversight of the listing or other regulatory programs.<sup>7</sup>

###### 2. Statutory Basis

Amex believes that the proposed rule change is consistent with section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of section 6(b)(5) of the Act<sup>9</sup> in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and

open market. In addition, Amex believes that the proposed rule change is consistent with section 6(b)(4) of the Act<sup>10</sup> in that it will promote the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Amex neither solicited nor received written comments with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder because it does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>13</sup>

The Amex has requested that the Commission waive the 30-day pre-operative period, which would make the rule change operative immediately. The Exchange believes that immediate effectiveness of the proposed rule change is appropriate in that it is substantially similar to existing Nasdaq rules, raises no new regulatory issues, and is concerned solely with a matter that is not likely to engender adverse comments or require the degree of

<sup>5</sup> See, *e.g.*, NASD Rules 4510(a)(5), 4510(b)(4), 4510(c)(2), 4510(d)(3), 4520(a)(3), 4520(b)(4) and 4520(c)(3), as well as IM-4500-1, IM-4500-2 and IM-4500-3.

<sup>6</sup> At its July 21, 2004, meeting, the Amex Board of Governors delegated authority to a staff committee, as its designee, to determine whether to grant fee reductions. The committee is comprised of management representatives from the Office of the Chairman and the Equities, Finance and Listing Qualifications Departments. In addition, an attorney from the Office of the General Counsel will provide legal counsel to the committee.

<sup>7</sup> Amex believes that if it determines to defer, waive or rebate listing fees in a comprehensive and/or recurring manner that would constitute a stated policy, practice or interpretation of an existing rule, the Amex will file an additional rule change, pursuant to Commission Rule 19b-4(f)(1), with respect to such policy, practice or interpretation.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> As required under Rule 19b-4(f)(6)(iii), Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

review attendant with more controversial filings.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case and designate the proposed rule change as operative on August 19, 2004, the date it was submitted to the Commission.<sup>14</sup> The Commission notes that the proposed rule change is similar to existing rules of Nasdaq<sup>15</sup> and, therefore, does not raise any new regulatory concerns.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-70 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-70 and should be submitted on or before September 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-2017 Filed 9-1-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50278; File No. SR-Amex-2004-64]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Standard and Poor's 500 Index

August 26, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 4, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade notes, the performance of which is linked to the Standard and Poor's 500 Index ("S&P 500" or "Index").

The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>3</sup> The Amex proposes to list for trading under Section 107A of the Company Guide notes issued by Citigroup, linked to the performance of the S&P 500 (the "S&P 500 Notes" or "Notes").<sup>4</sup> The S&P 500 is determined, calculated and maintained solely by S&P.<sup>5</sup> At maturity

<sup>3</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

<sup>4</sup> Citigroup Global Markets Holdings, Inc. ("Citigroup") and Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P") have entered into a non-exclusive license agreement providing for the use of the S&P 500 by Citigroup and certain affiliates and subsidiaries in connection with certain securities including these Notes. S&P is not responsible for and will not participate in the issuance and creation of the Notes.

<sup>5</sup> The S&P 500 Index is a broad-based stock index which provides an indication of the performance of the U.S. equity market. The Index is a capitalization-weighted index reflecting the total market value of 500 widely-held component stocks relative to a particular base period. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index Divisor keeps the Index comparable over time to its base period of 1941-1943 and is the reference point for all maintenance adjustments. The securities

<sup>14</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> See *supra* note 5.